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Attorney for Debtor
Maria L. Mez

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO

IN THE MATTER OF

CASE NO. 13-33800-B-13J
DOCKET CONTROL #: PGM-1
DATE: November 19, 2013
TIME: 9:32 a.m.
DEPT#: B, Courtroom 32
Honorable Judge Thomas C. Holman

Debtors /

MOTION TO EXTEND THE AUTOMATIC STAY PURSUANT TO
11 U.S.C. 362(c)(3)(B) AS TO ALL CREDITORS

TO ALL PARTIES IN INTEREST:

Debtor, Maria L. Mez, by and through her attorney of record, Peter G. Macaluso, respectfully moves this court for an Order Extending the Automatic Stay pursuant to 11 U.S.C. 362(c)(3)(B), as to all creditors in the above captioned case.

This motion is made pursuant to 11 U.S.C. 362(c)(3)(B) and Local Bankruptcy Rule 9014-1(f)(2) and based on these moving papers, the debtor's declaration, the records and pleadings on file herein, and upon such other oral and documentary evidence as may be presented at the hearing on this motion.

1 I. PROCEDURAL HISTORY

2 1. Debtor filed a previous Chapter 13 case, case# 10-53447 on
3 12/23/10, which was dismissed on or about 8/26/13.

4 2. The current Chapter 13 case was filed on 10/25/13. The
5 instant motion to extend the automatic stay is schedule to be heard
6 before the expiration of the initial 30 day automatic stay, as
7 required by statute (see In re Taylor, 334 B.R. 660 (Bank. D.Minn.
8 2005)).

9 3. The instant motion is being filed within 30 days of the filing
10 of the instant chapter 13 case (see In re Thomas, B.R. 2006 WL
11 278544).

12 4. The debtor filed a Chapter 13 Plan concurrently with the
13 Chapter 13 bankruptcy petition, which plan is confirmable and very
14 likely to successfully complete given the debtor's income and
15 expenses. Refer to Exhibit "A" and Exhibit "B" filed herewith.

16 5. The current plan provides for payment of her vehicle and
17 proposes to surrender the real property located at 7025 Thomas
18 Drive. The payments required are set at \$190.00 per month for
19 sixty months.

20 II. ARGUMENT

21 11 U.S.C. 362(c)(3)(A) limits the automatic stay to thirty
22 (30) days after the filing of the later case when the Debtor has
23 filed one prior case that has been dismissed without prejudice
24 within the past year. The Code also allows for the extension of
25 the automatic stay upon motion fo a party in interest within thirty
26 (30) days of filing of the most recently filed case. 11 U.S.C.
27 362(c)(3)(B). The Code section goes on to explain the moving party

1 must demonstrate that the most recently filed case has been filed
2 in good faith. Id.

3 In re Sarafoglou, 345 B.R. 19 (Bankr. D. Mass. 2006), sets out
4 a concise formula to evaluate whether a second bankruptcy filing
5 was filed in bad faith and therefore not subject to the extension
6 of the automatic stay. The factors the Court were to consider are:
7 (1) whether the case was filed to "obtain legitimate bankruptcy law
8 protection;" (2) whether the debtor "is eligible for such
9 protection and relief; (3) whether the debtor "is pursuing such
10 protection and relief honestly;" and (4) whether the debtor "has
11 sufficient resources to render the pursuit meaningfully."

12 Good cause exists for the granting of the Motion to Extend
13 Automatic Stay as to all creditors in this case. The extension is
14 necessary to protect the debtor's assets, absent the instant filing
15 as the debtor's current case overcomes any presumption of bad
16 faith.

17 Based on the aforementioned elements, the instant case was
18 filed in order to retain her vehicle. The debtor currently
19 unemployed and is receiving unemployment benefits in the amount of
20 \$1,275.00 per month.

21 Further, Debtor's Schedule I and B22C reflect that she is
22 earning enough wages and money to cover all her necessary
23 obligation sin addition to the proposed Chapter 13 Plan. The
24 Debtor reflects reasonable and necessary expenses of approximately
25 \$1,085.00, allowing for a monthly plan payment of \$190.00, and the
26 ability to fund the current plan, and obtain a discharge (See In re
27 Charles, 334 B.R. 207, 219 (Bank. S.D.Tex. 2005)).
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1 Lastly, there is no indication that the Debtor engaged in any
2 type of scheme or other operation to abuse the bankruptcy process.

3 **III. CONCLUSION**

4 Although the dismissal of the debtor's previous case raises
5 the presumption of bad faith, the debtors assert that they have
6 satisfactorily shown that the instant case was filed in good faith,
7 and that there is sufficient justification to extend the automatic
8 stay as to all creditors.

9 WHEREFORE, Debtors pray that this Court issue its Order
10 Extending the Automatic Stay as to all creditors in the above
11 captioned case.

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13 Date: November 5, 2013

/s/ Peter G. Macaluso
Peter G. Macaluso, Attorney at Law

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